

Advertising Rules – Proposed Changes to April 27th Draft – May 25, 2022

Vehicles In-Transit

Lines 25 through 27 – New language includes new vehicles in transit

Insert after line 27- New language includes used motor vehicles In transit

(iii) For purposes of Subsection (2)(b)(i), a used motor vehicle which is in transit to the advertiser at the address given, shall be considered in the possession of the advertiser if the advertiser has obtained:

- (A) A document showing proof of purchase and the date of purchase to the advertiser from the seller,
- (B) A document from an auto auction showing proof of purchase and indicating the date of purchase from the consignor or auto auction to the advertiser,
- (C) Other related documents indicating the date of purchase from the seller to the advertiser.

Any documents used to comply with Section (2)(b)(iii) (A)(B)(C) shall indicate the purchase of an advertised vehicle and shall be dated prior to the date of the advertised vehicle.

Upon request of any Motor Vehicle Enforcement Division investigator, advertiser shall produce all documents in its possession pertaining to an advertised motor vehicle indicating purchase or ownership of the advertised vehicle before being advertised.

Line 35 through 36

Advertising Price – what must be included

Insert on line 39: and undercoating or rustproofing charges, window etching, window tint, alarm systems, or any non-optional item installed on the vehicle at the time of the advertisement.

Line 45

Safety Inspection

Do not delete "Safety inspection and"

Notes:

Many dealers continue to safety inspect vehicles they sell. Some will charge their customers for the cost of the state safety inspection. Safety inspection is still required on some vehicles and selling safe vehicles is still the law. The only thing that changed is that a safety inspection verification certificate is not required to register a vehicle.

Line 56

Savings and Discounts - Delete line 56 through 64

Notes:

When the current rules were written over 50 years ago, there were very few resources for a consumer to know anything about the value or price of a motor vehicle. Back then it made sense to have this rule. In today's world, it is easy for any potential vehicle purchaser to research a wide variety of information about a vehicle being considered for sale. Most states around the country allow dealers to offer discounts and savings on any vehicle being advertised. With the global market we are in, keeping this restriction puts all Utah dealers at a disadvantage in the marketplace.

Nearly every other marketplace product is allowed to offer discounts on new and used products. Why are used and new vehicles being singled out?

Line 97

Definition Clarification - Lines 97 through 120

Insert: (j) Demonstrators, Executives' and Official Motor Vehicles means any motor vehicle that has never been sold or leased to a member of the public.

Notes: Demonstrators, Executives' and official motor vehicles only indicate who was using them. They all are vehicles that have never been titled. Language would still require that they be disclosed as such.

Delete Line 117 through 120

Commercial Vehicles – Taxi, Police, sheriff and other commercial vehicles

Notes: Vehicles identified in Line 117 through line 120 are vehicles that are not branded in Utah but may be considered

"commercial". They do not require separate disclosures under the current law. Tracking the history of a vehicle that may have been used for those purposes are impossible to track. We also have Uber and Lift vehicles or other "commercial" vehicles such as company trucks, fleets or utility vehicles in the marketplace. Where do we draw the line? How could anyone possibly know what a vehicle was used for?

Line 149

Test Trial - Written copy of test trial at time of purchase

Delete 149 through 151

Note: The terms and conditions of a driving trial must be disclosed in writing at the time of sale.

Insert on Line 155:

Deposits/Down Payments

On line 155: After "deposited," ADD: unless disclosed otherwise.

Language needs to be consistent with Commerce Fair Trade Practices Act

Commerce code about deposit/down payment refunds:

Deposits/down payments are always refundable unless disclosed otherwise. A deposit/down payment does not need to be returned if the dealer has the customer sign an agreement before the test drive that the deposit or down payment is not refundable.

Line 211

Rebates

Note:

Rebate Offers: Rebate offers are a way to offer a discount. Is this consistent with Savings & Discounts on lines 56 through 64?

1 **R877-23V-7. Misleading Advertising Pursuant to Utah Code Ann. Section 41-3-210.**

2 (1)(a) "Advertisement" means any oral, written, graphic, or pictorial statement
3 made that concerns the offering of a motor vehicle for sale or lease.

4 (b) "Advertisement" includes any statement or representation:

5 (i) made in a newspaper, magazine, electronic medium, or other publication;

6 (ii) made on radio or television;

7 (iii) appearing in any notice, handbill, sign, billboard, banner, poster, display,
8 circular, pamphlet, letter, or other printed material;

9 (iv) contained in any window sticker or price tag; and

10 (v) in any oral statement.

11 (c) "Advertisement" includes the terms "advertise" and "advertising".

12 (d) "Advertisement" does not include:

13 (i) a statement made solely for the purpose of obtaining motor vehicle financing or
14 a motor vehicle title; or

15 (ii) hand written negotiation sheets between a dealer and a customer of the dealer.

16 (2) Violation of this section constitutes a violation of licensing prohibitions and
17 requirements under [any of the following standards of practice for the advertising and
18 selling of motor vehicles is a violation of] Section 41-3-210.

19 (a) Accuracy. Any advertised statements and offers about a motor vehicle as to
20 year, make, model, type, condition, equipment, price, trade-in-allowance, terms, and so
21 forth, shall be clearly set forth and based upon facts.

22 (b) Bait. Bait advertising and bait and switch selling practices may not be used.

23 (i) Except as provided in Subsection (2)(b)(ii), A motor vehicle advertised at a
24 specific price shall be in the possession of the advertiser at the address given.

25 (ii) For purposes of Subsection (2)(b)(i), a new motor vehicle which is in transit to
26 the advertiser at the address given shall be considered in the possession of the advertiser
27 if the advertiser is a dealer of that make of new motor vehicle.

28 (iii)(A) [(H) An advertised vehicle shall be willingly shown, demonstrated and sold.

29 (B) If an advertised vehicle is sold, the advertiser shall, upon request of any
30 prospective purchaser, peace officer, or employee of the division, show sales records of
31 the advertised motor vehicle.

32 (iv) When an advertisement contains a picture of a motor vehicle along with a price,
33 the motor vehicle pictured must be a similar model with similar options and accessories as
34 the advertised motor vehicle.

35 (c)(i)[(A)] Price. When the price or payment of a motor vehicle is quoted the motor
36 vehicle shall be clearly identified as to make, year, model and if new or used.

37 (ii) Except as provided in Subsection (2)(c)~~(i)(B)~~(iii), the advertised price must
38 include charges that the customer must pay for the motor vehicle, including freight or
39 destination charges, dealer preparation, and dealer handling.

40 ~~(B)~~(iii) The following fees are not required to be included in the advertised price
41 that the customer must pay for the motor vehicle:

42 ~~(+)~~(A) dealer ~~document~~documentary service fees;

43 ~~(+)~~(B) if optional, undercoating or rustproofing ~~[fees]charges~~; ~~[and]~~

44 ~~(+)~~(C) taxes or fees required by the state, ~~[or] a county, or a local jurisdiction,~~
45 including sales tax, titling and registration fees, ~~[safety and]~~ emission fees, and
46 waste tire recycling fees~~[-]; and~~

47 ~~(D)~~ temporary permit fees, if applicable.

48 ~~(ii) In addition to other advertisements, this pertains to price statements such as~~
49 ~~"\$..... Buys".]~~

50 (iii) When "list", "sticker", or similar words ~~[of similar import]~~ are used in an
51 advertisement, ~~[they]the words~~ may refer only to the manufacturer's suggested retail price.

52 (iv) If a supplementary price sticker is used, the advertised price must include all
53 items listed on the supplementary sticker.

54 ~~(iv) If the customer requests and receives a temporary permit, the temporary~~
55 ~~permit fee need not be included in the advertised price.]~~

56 (d) Savings and Discount Claims. Because the intrinsic value of a used motor
57 vehicle is difficult to establish, specific claims of savings may not be used in an
58 advertisement.

59 (i) This includes statements such as, "Was priced at \$....., now priced at \$.....

60 ~~(+)~~(ii) The word "wholesale" may not be used in retail motor vehicle advertising.

61 ~~(+)~~(iii) Notwithstanding Subsection (2)(d)(i), when ~~[When]~~ a motor vehicle
62 advertisement contains an offer of a discount on a new motor vehicle, the amount of the
63 discount must be stated by reference to the manufacturer's suggested retail price of the
64 motor vehicle.

65 (e)(i) Down Payments. The amount of the down payment may not be stated in a
66 manner that suggests that ~~[it]the down payment~~ is the selling price of the motor vehicle.

67 (ii) If an advertisement states "You can buy with no money down", or ~~[terms of]~~
68 uses similar language ~~[import]~~, the customer must be able to leave the dealership with the
69 motor vehicle without making any outlay of money.

70 (f) Trade-in Allowance. Statements representing that no other dealer grants greater
71 allowances for trade-ins may not be used.

72 (i) A specific trade-in amount or range of trade-in amounts may not be used in
73 advertising.

74 (ii) An advertiser may not assert that a trade-in will be paid off regardless of what is
75 owed on the vehicle.

76 (g)(i)(A) Finance. The phrases, "no finance charge", "no carrying charge", or similar
77 expressions may not be used when there is a charge for placing the transaction on a time
78 payment basis.

79 (B) Statements representing or implying that no prospective credit purchaser will be
80 rejected because of inability to qualify for credit, such as "we accept all credit applications",
81 may not be used.

82 ~~[(B)](ii)~~ If the amount of the advertised payment changes during the term of the
83 loan, both the payments and the terms of the loan must be disclosed together.

84 ~~[(ii) The phrase "we will pay off your trade no matter what you owe" may not be
85 used.]~~

86 (h)(i) Unpaid Balance and Repossessions. The term "repossessed" may only be
87 used ~~[only]~~ to describe motor vehicles that have actually been repossessed ~~[from a
88 purchaser].~~

89 (ii) Advertisers offering repossessed motor vehicles for sale may be required to
90 offer proof of those repossessions. The unpaid balance shall be the full selling price unless
91 otherwise stated.

92 (i) Current Used. When a used motor vehicle, as defined by Section 41-3-102, of a
93 current series is advertised, the first line of the advertisement must contain the word
94 "used", "pre-owned", "certified used", "certified pre-owned", or other similar term used to
95 designate a used motor vehicle, or the text must clearly indicate that the motor vehicle
96 offered is used.

97 (j) Demonstrators, Executives' and Officials' Motor Vehicles.

98 (i) "Demonstrator" means a motor vehicle that has never been sold or leased to a
99 member of the public.

100 (ii) Demonstrator motor vehicles include motor vehicles used by new motor vehicle
101 dealers or their personnel for demonstrating performance ability.

102 (C) "Demonstrator" does not include a motor vehicle purchased or leased by a
103 dealer or the dealer's personnel for personal use. [but not motor vehicles purchased or
104 leased by dealers or their personnel and used as their personal motor vehicles.]

105 (iii) A demonstrator ~~[motor vehicle]~~ may be advertised for sale only by a dealer who
106 is franchised for the sale of that make of new motor vehicle.

107 (iv)(A) An "executive's or official's motor vehicle" means a motor vehicle that has:

108 (B) [executive's or official's motor vehicle shall have] been used exclusively by an
109 executive of the dealer's franchising manufacturer or distributor, or by an executive of the
110 franchised dealership; and

111 (C) never been sold or leased to a member or the public. [These motor vehicles
112 may not have been sold or leased to a member of the public prior to the appearance of the
113 advertisement.]

114 (v) Demonstrator's, executive's and official's motor vehicles shall be clearly and
115 prominently advertised as such. Advertisements shall include the year, make, and model
116 of the motor vehicle offered for sale.

117 (k) Taxi-cabs, Police, Sheriff, and Highway Patrol Motor Vehicles. Taxi-cabs,
118 police, sheriff, and highway patrol motor vehicles shall be ~~[se]~~clearly identified and~~[-
119 These motor vehicles]~~ may not be described ~~[by]~~using an ambiguous term such as
120 "commercial".

121 (l) Mileage Statements. ~~[When]~~ If an advertisement quotes the number of miles or a
122 range of miles a motor vehicle has been driven, the dealer ~~[must]~~ shall:

123 (i) have a properly completed odometer disclosure statement evidencing [written
124 evidence] that the motor vehicle has not been operated in excess of the advertised
125 mileage at the time of the advertisement; and

126 ~~[(i) The evidence required by this section shall be the properly completed odometer~~
127 ~~statement required by Section 41-1a-902.]~~

128 (ii) ~~[If a dealer chooses to advertise specific mileage or a range of miles a motor~~
129 ~~vehicle has been driven, the dealer shall]~~ upon request of any prospective purchaser,
130 peace officer, or employee of the division produce all documents in its possession
131 pertaining to that motor vehicle so that the mileage can be readily verified.

132 (m)(i) Underselling Claims. Unsupported underselling claims may not be used.

133 (ii) Underselling claims include the following:

134 (A) "our prices are guaranteed lower than elsewhere"[,];

135 (B) "money refunded if you can duplicate our values"[,];

136 (C) "we guarantee to sell for less"[,];

137 (D) "we sell for less"[,];

138 (E) "we purchase motor vehicles for less so we can sell them for less"[,];

139 (F) "highest trade-in allowance"[,]; and

140 (G) "we give \$300 more in trade than any other dealers".

141 (iii) Evidence of supported underselling claims must be contained in the
142 advertisement and shall be produced upon request of a prospective purchaser, peace
143 officer, or employee of the division.

144 (n) Statements such as "write your own deal", "name your own price", "name your
145 own monthly payments", "appraise your own motor vehicle", and phrases of similar import
146 may not be used.

147 ~~[(n)](o)~~ Free. "Free" may be used in advertising only when the advertiser is offering
148 a gift that is not conditional on the purchase of any ~~[property]~~ vehicle or service.

149 ~~[(o)](p)~~(i) Driving Trial. If an advertisement or quote offers a free driving trial,
150 driving trial, or similar offer, the exact terms and conditions of the offer shall be set forth in
151 writing and a copy given to the purchaser at the time of sale.

152 (ii) ~~[A free driving trial]~~ "Free driving trial", "driving trial", or similar offer means a[that
153 the] purchaser may drive the motor vehicle during the trial period and return it to the dealer
154 within the specified period and obtain;

155 (A) a full refund of any amounts or consideration that was paid or deposited; [of all
156 moneys,]

157 (B) cancellation and return of signed agreements; and[, or other considerations
158 deposited and]

159 (C) a return of any motor vehicle traded in. ~~[The exact terms and conditions of the~~
160 ~~free driving trial shall be set forth in writing and a copy given to the purchaser at the time of~~
161 ~~the sale.]~~

162 ~~[(p)](q)~~ Guaranteed. An advertisement using [When] words such as "guarantee",
163 "warranty", or other similar terms implying protection [are used in advertising,] shall include

164 an explanation of the ~~[time]~~terms and coverage of the guarantee or warranty ~~[shall be~~
165 ~~given]~~ in clear and concise language~~[-The]~~and the purchaser shall be provided with a
166 written document stating the specific terms and coverage.

167 ~~[(e) Name Your Own Deal. Statements such as "write your own deal", "name your~~
168 ~~own price", "name your own monthly payments", "appraise your own motor vehicle", and~~
169 ~~phrases of similar import may not be used.]~~

170 (r) Disclosure of Material Facts. Disclosures of material facts that are contained in
171 advertisements and that involve types of motor vehicles and transactions shall be made in
172 a clear and conspicuous manner.

173 (i) For purposes of Subsection (2)(r), "clear and conspicuous" does not include:

174 (A) ~~[Fine]~~ fine print;~~[-and]~~

175 (B) mouse print; ~~[are not acceptable methods of disclosing material facts.]~~

176 (C) font or font size smaller than the smallest font or font size of the text used

177 throughout the body of the advertisement;

178 (D) use of an asterisks or other reference symbol to give additional information if
179 the additional information contradicts or substantially changes the meaning of any
180 advertised statements.

181 ~~[(ii) The disclosure must be made in a typeface and point size comparable to the~~
182 ~~smallest typeface and point size of the text used throughout the body of the~~
183 ~~advertisement.]~~

184 ~~[(iii) An asterisk may be used to give additional information about a word or term,~~
185 ~~however, asterisks or other reference symbols may not be used as a means of~~
186 ~~contradicting or substantially changing the meaning of any advertising statements.]~~

187 ~~[(iv)](ii) The speed of the words spoken in any verbal advertisement [must]shall be~~
188 constant throughout the advertisement.

189 (s) Lease. When an advertisement relates to a lease, the advertisement must
190 make it readily apparent that the transaction advertised is a lease.

191 (i) For purposes of Subsection (2)(s), [The] the word "lease" shall be used and shall
192 [must] appear in a prominent position in the advertisement in a [typeface and point]font
193 and font size as large as [comparable to] the largest text used to directly advertise the
194 motor vehicle.

195 (ii) Statements that do not use the term "lease" do not constitute adequate
196 disclosure of a lease.

197 (iii) Lease advertisements may not contain the phrase "no down payment" or use
198 a similar phrase if any payment [words of similar import if an outlay of money] is required
199 to lease the motor vehicle.

200 (iv) Lease terms that are not available to the general public may not be included in
201 advertisements directed at the general public.

202 (v) Limitations and qualifications applicable to the lease terms advertised shall be
203 clearly and conspicuously disclosed.

204 (t) Electronic Medium Disclosures. A disclosure appearing in any electronic
205 advertising medium must clearly and conspicuously feature all necessary information in a

206 manner that can be read and understood if type is used, or that can be heard and
207 understood if audio is used.

208 (u) Invoice or Cost. The terms "invoice" or "factory invoice" may be used as long
209 as the dealer is willing to show the factory invoice to the prospective buyer. The term
210 "cost" may not be used.

211 (v) Rebate Offers. "Rebate", "cash rebate", or similar terms may be used only
212 when it is clearly and conspicuously stated who is offering the rebate.

213 (w) Buy-down Interest Rates. No buy-down interest rate may be advertised unless
214 the dealer discloses the amount of dealer contribution and states that the contribution by
215 the dealership may increase the negotiated price of the motor vehicle.

216 (x) Special Status of Dealership. A motor vehicle advertisement may not falsely
217 imply that the dealer has a special sponsorship, approval status, affiliation, or connection
218 with the manufacturer that is greater or more direct than any other like dealer.

219 (y)(i) Price Equaling. An advertisement that expresses a policy of matching or
220 bettering competitor's prices shall fully disclose any conditions that apply and specify the
221 evidence a consumer must present to take advantage of the offer.

222 (ii) The evidence described in Subsection (2)(y)(i), [requirement] may not place an
223 unreasonable burden on the consumer. [~~however, for example requiring~~]

224 (iii) It is not an unreasonable burden to require the consumer to bring a written offer
225 made to that consumer by an authorized representative of a dealership on a substantially
226 similar motor vehicle. [~~would be considered reasonable.~~]

227 (z) Auction. "Auction", [~~or~~] "auction special" [~~and~~], or other similar terms [~~terms of~~
228 ~~similar import~~] may be used only in connection with motor vehicles offered or sold at a
229 bona fide auction.

230 (aa) Layout and Type Size. The layout, headlines, illustrations, or [~~type~~]font size of
231 a printed advertisement and the broadcast words or pictures of radio, television, or
232 electronic medium advertisements may not convey or permit an erroneous or misleading
233 impression as to which motor vehicle or motor vehicles are offered at featured prices.

234 [~~(i) When an advertisement contains a picture of a motor vehicle along with a~~
235 ~~quoted price, the motor vehicle pictured must be a similar model with similar options and~~
236 ~~accessories as the motor vehicle advertised.]~~

237 [(ii)](bb)(i) No advertised offer, expression, or display of price, terms, down
238 payment, trade-in allowances, cash difference, savings, or other material terms may be
239 misleading and any necessary qualifications shall be clearly, conspicuously, and
240 accurately set forth to prevent misunderstanding.

241 [(iii)](ii) [~~Qualifying terms and phrases shall be~~]For purposes of Subsection (2)(bb),
242 "clearly, conspicuously, and accurately" means: [~~set forth as follows:~~]

243 (A) in bold print and in [~~type of a size~~]a font size that is capable of being read
244 without unreasonable [~~extra~~] effort;

245 (B) in terms that are understandable to the buying public; and

246 (C) in close proximity to the qualified representation and not separated or buried by
247 asterisk in some other part of the advertisement.

248 ~~[(bb)](cc)(i)~~ An advertisement must disclose ~~[that]~~ if a vehicle ~~[is a salvage vehicle~~
249 ~~with]~~ has a branded title or salvage certificate.

250 (ii) The disclosure described in Subsection (2)(cc)(i), shall be made by inserting the
251 terms "salvage certificate" or "branded title," as appropriate:

252 ~~[(i)](A)~~ immediately following the year, make, and model of the advertised ~~[salvage]~~
253 vehicle; and

254 ~~[(ii)](B)~~ in the same font ~~[typeface]~~ and ~~[point]~~ font size as is ~~[the typeface and font~~
255 ~~size]~~ used to advertise the year, make, and model of the ~~[salvage]~~ vehicle.